

201 KAR 11:220. Errors and omissions insurance requirements.

RELATES TO: KRS 324.010, 324.020, 324.395

STATUTORY AUTHORITY: KRS 324.282, 324.395(4), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 requires the Kentucky Real Estate Commission to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 324. KRS 324.395(4) allows licensees the option of obtaining errors and omissions insurance independently, and KRS 324.395(5) requires the commission to determine the terms and conditions of errors and omissions insurance coverage. This administrative regulation sets forth procedures and standards for obtaining insurance independently.

Section 1. (1) An insurance company providing real estate errors and omissions insurance for real estate licensees shall provide a signed certification to the insured licensee which shall confirm that the obligations of the insurance company meet the minimum requirements set forth in this administrative regulation.

(2) A licensee who chooses to be insured by other than the group insurance policy obtained by the commission shall file the private carrier certification of coverage with the license renewal application in accordance with KRS 324.395(6). This certification shall be available on the commission's Web site, www.krec.ky.gov, and shall be included in the yearly renewal package mailed to all principal brokers.

Section 2. The insurance for which the certification has been executed shall not be terminated, cancelled, lapsed, or nonrenewed unless the insurance company has provided the commission with prior written notice.

Section 3. The minimum requirements for the coverage contained in the insurance policy for which the certification has been executed shall provide that: (1) Coverage shall be that known as real estate agents errors and omissions insurance or real estate agents professional liability insurance.

(2) The limit of liability shall not be less than \$100,000 for any one (1) claim, excluding the cost of investigation and defense, nor less than \$1,000,000 annual aggregate limit of liability, excluding the cost of investigation and defense. A principal broker who decides to purchase independent errors and omissions "firm coverage" insurance shall have the following aggregate amounts:

(a) One (1) to forty (40) licensees shall carry a \$1,000,000 annual aggregate; or

(b) Forty-one (41) or more licensees shall carry a \$2,000,000 annual aggregate.

(3) The maximum deductibles, which may be separate deductibles, shall not exceed \$2,500 for judgment or settlement and \$1,000 for the cost of investigation and defense.

(4) Coverage shall apply for any covered claim resulting from a licensed activity that occurred subsequent to April 1, 1987, unless the claim had been made against the licensee before the present insurance policy's inception or is insured by a previous insurance policy.

Section 4. Except as provided in Section 5 of this administrative regulation, coverage shall not exclude claims brought against the insured arising out of an act or failure to act by the insured licensee when performing a professional service for which a license is required by the Commonwealth of Kentucky under KRS 324.020.

Section 5. Coverage may exclude claims brought against the insured, regardless of whether the professional service involves an activity for which a license is required by the Common-

wealth of Kentucky:

- (1) Arising out of a dishonest, fraudulent, criminal or malicious act, error, or omission, if committed by, at the direction of, or with the knowledge of the insured;
- (2) Arising as a result of the insolvency of the insured;
- (3) Brought about or contributed to by any inability or failure to pay or collect premium, es-crow, or tax money;
- (4) Brought about by any employee, or former employee arising out of the contract of em-ployment with the insured and alleging breach thereof;
- (5) Arising out of any injury or damage which the insured either expected or intended;
- (6) Brought about by bodily injury, sickness, disease, or death of any person or physical in-jury to, or destruction of, or loss of use of tangible property;
- (7) Arising out of libel, slander, defamation of character, false arrest or imprisonment, wrongful entry or eviction or other invasion of the right of private occupancy, publications or ut-terances in violation of an individual's right of privacy, or malicious prosecution;
- (8) Arising out of services performed by the insured which are subject to the Employee Re-tirement Income Security Act of 1974, 29 U.S.C. 1001, as amended;
- (9) Arising out of any violation of the Securities Act of 1933, 15 U.S.C. 77a, as amended or the Securities Exchange Act of 1934, 15 U.S.C. 78a, as amended or any state blue sky or se-curities law, or similar state or federal statutes;
- (10) Arising out of the conversion, misappropriation, commingling, or defalcation of funds or other property;
- (11) Brought against a real estate property manager for failure to effect or maintain ade-quate levels or types of insurance;
- (12) Arising out of unlawful discrimination;
- (13) Arising out of liability assumed by the insured under any indemnity, hold harmless, or similar provisions or agreements, except this exclusion shall not apply to liability the insured would have in the absence of these agreements;
- (14)(a) Arising:
 1. Out of the insured's business; and
 2. By or on behalf of an investor, shareholder, or partner in any corporation, limited or gen-eral partnership, real estate trust, or venture in which the insured has or had a participating in-terest, directly or indirectly, in the profits or losses; or
- (b) In connection with the insured's activities as an underwriter, sponsor, partner, joint or coventurer, or member in any real estate partnership, venture, or syndicate;
- (15) Arising out of, relating to, or based upon the dispersal, discharge, escape, release, or saturation of smoke, vapors, soot, fumes, acids, alkalies, toxic chemicals, liquids, gases, or other materials, irritants, contaminants, or pollutants. Pollutants shall include any solid, liquid, gaseous, thermal, biological, or radioactive substance, material, matter, toxin, irritant or con-taminant, including radon, asbestos, chemicals and waste. Waste shall include materials to be recycled, reconditioned, or reclaimed;
- (16) Excluded by the Nuclear Energy Liability Exclusion Endorsement (broad form) filed by the Insurance Services Office, Inc. with the Kentucky Department of Insurance and identified as form #IL 00 21 11 85;
- (17)(a) Arising from the sale or property management of property developed, constructed, or owned by:
 1. The insured;
 2. Any firm or corporation in which the insured has a financial interest; or
 3. Any firm coming under the same financial control as the insured.
- (b) This exclusion shall not apply and coverage shall be extended to claims arising from the

sale of real property, if all three (3) of the following conditions are met:

1. The property was acquired by the insured under a guaranteed sale listing contract;
2. The title to the property was only temporarily held by the insured during the transit period, not to exceed one (1) year, from acquisition to resale; and
3. The property is listed for sale during the entire transit period; or

(18) Arising out of the interests, operations, or activities of the insured as a mortgage banker or correspondent, escrow agent, construction manager, or property developer. An insured shall not be considered engaging in the activities of an escrow agent merely because the insured holds earnest money deposits, rental deposits, or similar items. (14 Ky.R. 1021; eff. 12-11-87; Am. 1579; eff. 3-10-88; 33 Ky.R. 449; 720; eff. 10-6-2006; 33 Ky.R. 3434; eff. 8-31-07; 40 Ky.R. 365; 787; eff. 365; 787; eff. 11-1-2013.)